163 U.S. 385

RECORD, CASE No. 14,766.

163-885

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

39

TERM No., ~~1292~~. ~~876~~ ~~768~~ 244

VICTOR MEYER AND ADOLPH MEYER, PLAINTIFFS IN ERROR,

vs.

WALTER T. RICHARDS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED JULY 23, 1891.

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INDEX.

	Original.	Print.
Caption	*a*	1
Petition	1	1
Answer	4	2
Agreed statement of facts	7	4
Exhibit A—Photographic copy of bond	16½	10
Stipulation to replace lost record	17	11
Judgment	17½	11
Stipulation waiving legal delays	18	12
Assignment of errors	18	12
Writ of error (copy)	19	12
Bond for writ of error	20	13
Citation (copy)	22	14
Clerk's certificate	23	15
Opinion	24	15
Writ of error (original)	26	16

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 3, 1891.

a United States Circuit Court.

EASTERN DISTRICT OF LOUISIANA, *ss:*

VICTOR MEYER and ADOLPH MEYER
vs.
WALTER T. RICHARDS. } No. 12003.

1 *Petition. Filed May* 5, 1891.

To the honorable the judges of the circuit court of the United States for the fifth circuit and the eastern district of Louisiana, *ss:*

The petition of Victor Meyer and Adolph Meyer, who are citizens of the United States and reside in the city of New Orleans, in this district and circuit, respectfully represents—

That Walter T. Richards, who is an alien and a subject of the Queen of Great Britain and who resides and does business in New Orleans, is justly and truly indebted unto your petitioners in the full sum of eight thousand three hundred and eighty-three dollars and seventy-five cents, with five per cent. per annum interest thereon from judicial demand until payment, for this, to wit:

That on or about the 27th day of February, 1889, the said Walter T. Richards sold to your petitioners the following-described bonds, which said Richards sold and delivered to your petitioners as good, valid, and legal bonds of the State of Louisiana and for which petitioners paid to said Richards, at the agreed price of eighty-eight and a quarter cents on the dollar, the said sum of eight thousand three hundred and eighty-three $\frac{75}{100}$ dollars.

The said bonds were of the numbers and description as follows:

Six (6) bonds of one thousand dollars each, purporting to be Louisiana State consols, issued under the authority of an act of the General Assembly approved January 24, 1874, and numbered, respectively, Nos. 740, 793, 846, 856, 900, and 904.

Six (6) bonds of five hundred dollars each, purporting to be Louisiana State consols, issued under the authority of the same act and numbered, respectively, Nos. 1971, 1993, 2010, 2020, 2057, and 2026.

One (1) bond of five hundred dollars, purporting to be a Louisiana consol, issued under the authority of the same act and numbered No. 532.

2 Petitioners aver that the said Richards delivered to them the above-described bonds (which were filed herein and made part hereof) as good and legal bonds of the State of Louisiana and represented them to be such; that petitioners received them as such and paid for them the market price for valid bonds and held them for several months without any knowledge or suspicion that the bonds were not such as they were represented to be.

Petitioners show that long after said sale and delivery to them, to wit, about the month of September, 1889, they discovered and it was officially announced by the proper officers of the State that the above-described so-called bonds were not good, legal, and valid bonds

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That on or about the 27th day of February, 1889, the said Walter T. Richards sold to your petitioners the following-deseribed bonds, which said Richards sold and delivered to your petitioners as good, valid, and legal bonds of the State of Louisiana and for which petitioners paid to said Richards, at the agreed price of eighty-eight and a quarter cents on the dollar, the said sum of eight thousand three hundred and eighty-three $\frac{75}{100}$ dollars.

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Petitioners show that long after said sale and delivery to them, to wit, about the month of September, 1889, they discovered and it was officially announced by the proper officers of the State that the above-described so-called bonds were not good, legal, and valid bonds

of the State of Louisiana, and that the said bonds have never been legally issued by said State; that the six above-described bonds of one thousand dollars each, numbered 740, 793, 846, 856, 900, and 904, are a portion of the consolidated bonds formerly held by the State treasurer for the use of the Agricultural and Mechanical College fund, and that the six above-described bonds of five hundred dollars each, numbered 1971, 1993, 2010, 2020, 2057, and 2026, are a portion of the consolidated bonds formerly held by the State treasurer for the use of the seminary fund, and which said above-described twelve bonds, as forming a portion of said funds, were declared by the 233d article of the constitution of the State of Louisiana to be null and void after the first day of January, 1880, which said article also prohibited the General Assembly from ever making any provision for their payment; and petitioners say that on said first day of January, 1880, the date of said nullity, and afterward the said bonds were in the State treasury.

Petitioners aver that the bond for five hundred dollars numbered 532 is claimed by the State to be null and void and to have been never legally issued.

Petitioners aver that since they discovered the invalidity of the said bonds and that the same were valueless that they have
3 made demand upon the said Walter T. Richards to exchange the said bonds for good and valid consolidated bonds of the State of Louisiana, such as he represented them to be, or to refund them the purchase price thereof, but said defendant refuses and neglects to comply with the demand.

Wherefore petitioners respectfully pray that said Walter T. Richards be cited to appear and answer this petition and demand within the legal delay, and that after due proceedings had your petitioners may have and recover judgment in their favor and against said Walter T. Richards for the said sum of eight thousand three hundred and eighty-three $\frac{75}{100}$ dollars, with five per cent. per annum interest thereon from judicial demand, and costs of suit; and petitioners pray for all general and equitable relief.

FARRAR, JONAS & KRUTTSCHNITT, *Attorneys.*

4 Circuit Court of the United States.

EASTERN DISTRICT OF LOUISIANA, *New Orleans Division,* } *ss:*

VICTOR MEYER and ADOLPH MEYER *versus* WALTER T. RICHARDS. } No. 12003.

Answer. Filed June 20, '91.

And now comes the said defendant, Walter T. Richards, by his undersigned attorneys, and, for answer to the plaintiffs' petition herein, denies each and all of the material allegation set forth and contained in said petition and takes full issue of fact and law thereon

except in so far as the same may be specially hereinafter admitted and confessed as follows:

1. This defendant admits and confesses that he is an alien as to the United States and is a subject of Great Britain.

2. That the plaintiffs at the time alleged in their petition were copartners and jointly interested in the purchase of the said bonds or obligations of the State of Louisiana described in their said petition and are properly joined in this action.

3. That on and before the said 27th day of February, 1889, this defendant was the owner of the said bonds and obligations of the State of Louisiana set forth and described in said plaintiffs' petition, numbered as set forth in said petition; that said bonds
5 were and are on the face thereof the bonds and obligations of the State of Louisiana, wherein and by the terms whereof the State of Louisiana, in due and competent form, under the warrant of due and competent acts of the legislature and the constitution of the State, undertook and promised to pay to the bearer of each of said bonds the full sum of money named in each of said bonds at the date named in said bonds, with interest as named therein; that none of the said bonds were on said 27th day of February, 1889, due and payable and at this time are not due and payable by the terms thereof, but are, in law and fact, severally immature as to principal, and are of such form and effect that the title thereto passes by delivery; that this defendant acquired each and all of said bonds or obligations long prior to the said 27th day of February, 1889, and to the date of his sale thereof to the said plaintiffs by purchase in open market, for a full and valuable consideration in money, before the maturity thereof, in full and exact good faith and with no knowledge, suspicion, or belief of any defect in the title or obligation of said bonds or any outstanding equity relating thereto to change, modify, or destroy the obligation as written and contained in said bonds severally.

And that he sold and delivered each and all of said bonds described in said petition to said plaintiffs at the date stated in said petition, for a valuable consideration and in like good faith, believing in the full validity thereof.

4. That it is true that this defendant did receive from the said plaintiffs the full sum of eighty-eight and a quarter cents on the dollar named in said bonds as the price of the sale thereof to said plaintiffs, and that the total amount of the price thereof was paid to this defendant by said plaintiff on the 27th day of February, 1889, amounting to the sum of eight thousand three hundred and eighty-three $\frac{7}{100}$ dollars, and that the said bonds were on that day delivered to the said plaintiffs and by them accepted.

5. That it is true that at the time of the delivering of said
6 bonds to the plaintiffs as aforesaid this defendant did represent the same to be good and legal obligations and bonds of the State of Louisiana, and believed then and still believes that the same are in all things valid and legal obligations of the State in the hands of all good faithholders thereof, and that it is true, as stated in said petition, that the plaintiffs received said bonds, believing

the same valid, and paid therefor the full market value thereof in open market of that day.

6. That if the plaintiffs are entitled to recover anything from this defendant the amount of such is correctly stated in the prayer of petition herein.

But as to all other matters and obligations set forth and contained in said petition this defendant specially denies and traverses the same, and avers that the said several bonds so by him sold and delivered to the said plaintiffs are, each and all of them, in the hands of said plaintiffs, good, valid, complete, and existing obligations of the State of Louisiana to pay to the said plaint-ffs the sums of money named in said bonds at the time and on the terms and conditions written in the bonds, and that there is and has been no breach of warranty of the title thereof by this defendant.

Wherefore defendant prays for judgment against the plaintiffs' demand, with costs, and will ever pray, etc.

(Signed) HENRY L. LAZARUS,
J. R. BECKWITH,
Att'ys for Defendant.

7 United States Circuit Court.

EASTERN DISTRICT OF LOUISIANA, *ss:*

VICTOR MEYER and ADOLPH MEYER
versus
WALTER T. RICHARDS. } No. 12003.

Statement of Facts. Filed June 20, '91.

It is stipulated and agreed by and between the respective parties hereto, as well the plaintiff- as the defendant, that the following shall be taken as the statement of facts in this cause, and shall stand and be taken as a special verdict in the cause.

1. The defendent, prior to the sale of the bonds to the plaintiffs, as averred in the petition, was the *bona fide* holder of each and all of the bonds described in said petition, having acquired each and all of said bonds in open public market for full market value, with no notice whatsoever of any alleged vice or alleged illegality of the bonds, and the statements in that respect as set forth in defendant's answer herein are true.

2. The defendant so acquired said bonds long before he or the public knew that it was charged by any person that said bonds were illegally issued, and the impress of the seal of the State and the signatures of the several officers of the State, whose names appear on said bonds, are each and all of them genuine and true and in no manner forgeries.

3. The bond attached to this statement of facts, marked "A," is one of the bonds described in the petition, the others differ-
8 ing only in number and amount of the bond, and the coupons annexed to said bonds are all genuine, and were issued by the State of Louisiana when the bonds were originally issued.

All of the bonds described in the petition were issued under and by authority of an act of the legislature of the State of Louisiana, approved January 24, 1874, being act No. 3 of the acts of the said legislature, as published by authority of the State, and said act, as well as all other acts of the legislature referred to in any part of this statement of facts, *are* made part of this statement of facts, the same in all respects as if written herein *in extenso*.

5. The intent and purpose of said act No. 3 of the acts of 1874 was to scale down the public debt, funded and otherwise, by exchanging for such evidences of debt bonds issued under the provisions of said act No. 3 of 1874, at the rate of sixty cents in new bonds for each dollar of outstanding bonds or warrants of the description given in said act No. 3 of 1874. The bonds issued under said act No. 3 of 1874 are commonly known as and called "consolidated bonds," and will be so hereinafter designated in this statement of facts, and were all in the form of the said bond referred to in the third preceding statement of facts and made part thereof, differing only in amount and in the serial numbers impressed on the bond, and when given in exchange for other prior bonds or obligations of the State, in no manner on the face of the consolidated bonds referred to, or described the obligation or obligations for which such bond had been exchanged, but appeared as the general obligation of the State to pay the bond with interest at the date named in the bond, and the holder or purchaser of such consolidated bond who purchased the same in the market had no means of ascertaining for what prior obligation of the State said bond had been given in exchange.

6. The State of Louisiana, under the provisions of an act of Congress approved March 3, 1827, 4th Statutes at Large, chapter 97, page 244, acquired public lands of the United States for the
9 use of a seminary of learning, the title being vested in the State of Louisiana for the use of such seminary in such manner as the legislature of the State might direct.

7. The legislature of the State authorized the sale of said seminary lands and converted the same into money prior to the year 1874.

8. By the provisions of an act of the State legislature approved March 19, 1857, being act No. 182 of the acts of 1857, as published by authority, the State authorized the issue of State bonds to the amount of the price received for the said lands, amounting to one hundred and thirty-six thousand two hundred dollars in bonds, to be payable forty years from the first day of July, 1858, with interest at the rate of six per cent., and declared the same to be a perpetual trust, the bonds to be held in the joint custody of the secretary of state and the State treasurer, as fully and at large appears by said act No. 182 of 1857, made part hereof as if written into this statement of facts *in extenso*.

9. The bonds referred to in the last statement of facts, No. 8, remained in the custody of the treasurer and secretary of state as a trust until July 1, 1878, when, on the request of the then State treasurer and the then secretary of state, the funding board or board of

liquidation provided for by said act No. 3 of 1874 permitted the said treasurer and the said secretary of state to surrender the said trust bonds held by them for the seminary fund under said act No. 182 of 1857 and take in exchange and place thereof sixty per cent. of the face thereof in consolidated bonds, issued under the so-called funding act of 1874, scaling down the fund forty per cent. The seminary fund as represented by said consolidated bonds remained in that form in the joint custody of the secretary and treasurer of the State and represented the seminary fund until the adoption of the new State constitution of 1879, going into force January 1, 1880, and sometimes called the constitution of 1880.

10. Article 233 of the State constitution of 1880, now in force and made part of this statement of facts the same as if written herein *in extenso*, declared the State indebted to said seminary
10 fund in the sum of one hundred and thirty-six thousand two hundred dollars, and provided that this amount should be placed to the credit of that fund on the books of the auditor of the State, upon which credit the State should pay an annual interest of four per cent., and "the consolidated bonds of the State now held for the use of said fund shall be null and void after the first day of January, 1880."

11. Under the provision of an act of Congress approved July 2, 1862, chapter 130, acts of 1862, 12th Statutes at Large, page 503, the State of Louisiana received from the United States two hundred and ten thousand acres of land for the support of an agricultural and mechanical college, as provided for in the act of donation. This land was sold by the State and realized the amount of three hundred and twenty-seven thousand dollars, which was invested in State bonds bearing six per cent. interest, and was in that condition at the date of the adoption of the so-called funding act or act No. 3 of the acts of 1874, the bonds being in the possession of the State and held in trust for said Agricultural and Mechanical College fund.

12. The board of liquidation, provided for in act No. 3 of 1874, on November 30, 1874, took the surrender of said six per cent. bonds belonging to the Agricultural and Mechanical College fund and gave in exchange therefor bonds issued under said act No. 3 of 1874, consolidated bonds to the amount of one hundred and ninety-six thousand two hundred dollars, being a scale-down of forty per cent. These bonds went into the custody of the State as representing the trust fund of the said Agricultural and Mechanical college so reduced by scaling.

13. Article 233 of the State constitution of 1880 declared the debt of the State to the said Agricultural and Mechanical College fund to be one hundred and eighty-two thousand three hundred and thirteen $\frac{3}{100}$ dollars, and ordered that amount to be placed to the credit of that fund on the books of the auditor of the State as a perpetual loan at five per cent. interest, and declared the consolidated bonds held by the State for the use of said fund null and void after
11 the first day of January, 1880, as appears by said article 233 of the State constitution of 1880, made part hereof.

14. At the time of the delivery of the consolidated bonds under

act No. 3 of 1874 in exchange for the bonds of the Agricultural and Mechanical College fund before that time representing that fund there was no receipt given to the board of liquidation for the consolidated bonds so taken in exchange, nor was there anything on the face of the bonds so given in exchange to show that they belonged to any particular fund or were in any manner impressed with any trust, but were in all respects of the same character and appearance as all other consolidated bonds issued under said act No. 3 of 1874.

15. That, although there was no record showing the particular bonds given by the board of liquidation to the said Agricultural and Mechanical College fund or any record to indicate the serial numbers of such bonds, Antoine Dubuclet, at that time State treasurer, in his official report as treasurer for the year 1878 reported as on hand and representing the said Agricultural and Mechanical College fund consolidated bonds to the amount of one hundred and ninety-six thousand dollars ($196,000), numbered from 710 to 905, inclusive.

16. That on the 1st day of January, 1880, the consolidated bonds representing both the seminary fund and the Agricultural and Mechanical College fund were in the possession of E. A. Burke, at that time treasurer of the State of Louisiana, and held by him as treasurer for the State at the time the constitution of 1880 went into effect—that is, on the 1st day of January, 1880.

17. E. A. Burke continued to be treasurer of the State of Louisiana from 1879 to 1888, when his term of office expired, and a joint committee of both houses of the legislature examined his office and accounts and pronounced his accounts and office correct, and his successor took possession of the office with no charge of shortage of assets or bonds or defalcation of any character in Burke's administration of the office of treasurer, and the public were given to under-
12 stand that Burrke had been honest and faithful in his office and had perpetrated no act of fraud, and such was the belief amongst all those dealing in said bonds, and particularly was the belief of the said defendant.

18. The treasury authorities of the State having charge of the payment of its obligations paid from the public monies of the State interest coupons attached to the bonds described in plaintiffs' petition herein maturing after the first day of January, 1880, and made no question of validity of either the bonds or coupons presented for payment, and only refused to pay the interest coupons after twenty-one coupons maturing after the first day of January, 1880, had been paid by the State without any question of its liability or the validity of the coupons.

19. There has been no action instituted by the State to have the bonds described in the petition herein declared or adjudicated void or not to be the obligations of the State. There has been a session of the State legislature since the State treasurer and treasury department of the State first refused to pay the coupons attached to said bonds, and that legislature adjourned without taking any action de-

claring said bonds void or illegally issued or declaring them not to be obligations of the State.

20. The plaintiffs in this cause contend that the bonds named and described in the petition herein are not obligations of the State, because the serial numbers of said bonds agree with the serial numbers given by Antoine Dubuclet, as treasurer of the State, as the numbers of the bonds in his hands representing the said trust fund of the Agricultural and Mechanical college in his official report as treasurer for the year 1879, except as to one of the bonds, being bond No. 532 for five hundred dollars, which is not claimed to be the number of a consolidated bond held in trust for the seminary fund on the first day of January, 1880, and while not contending that the seal and each and all of the signatures on said bonds are genuine, or that the bonds were not issued under the authority of act No. 3 of 1874, the plaintiffs insist that E. A. Burke, while treasurer
13 of the State and in possession of the bonds, illegally put the bonds in circulation, whereby they came into the hands of *bona fide* holders, being third persons, with no knowledge of any alleged fraud by such Burke, and contend that even in the hands of such innocent holders the bonds are void because of article 233 of the constitution of 1880, declaring the bonds held for both of said trust funds null and void from and after the 1st day of January, 1880.

21. E. A. Burke, as treasurer of the State, on January 1, 1880, the day when the constitution of 1879 went into effect and operation, made his report to the governor of the state of the treasury for the year 1879, in which report he, in statement "E," in respect to the Mechanical and Agricultural college, as he terms it, made the following statement:

Mechanical and Agricultural College.

196 bonds of $1,000 each issued by the State of Louisiana under act No. 3 of 1879, Nos. 710 to 905, inclusive ----	$196,000
2 bonds of $500 each issued by the State of Louisiana under act No. 3 of 1879, Nos. 42 and 43----------	200
	$196,200

And in respect of the "Louisiana State University or Seminary fund," as he terms it, made the following statement:

Louisiana State University or Seminary Fund.

164 bonds of $500 each issued by the State of Louisiana under act No. 3 of 1879, Nos. 1902 to 2065, inclusive--	$82,000
2 bonds of $500 each issued by the State of Louisiana under act No. 3 of 1879, Nos. 4184 and 4185----------	200
1 bond of $1,000, consolidated debt city of New Orleans, dated July 1, 1852, No. 492 ----------	1,000
	$83,200

describing the bonds held for said fund as bonds issued under " act No. 3 of 1879," and from and after said report of January 1, 1880, until the expiration of his term of office, in 1888, he never again made any allusion to any bonds held for either of said trust funds.

22. That as to the particular bond sued on, numbered 532, dated January 1, 1874, the same is one of the consolidated bonds
14 " issued under the provisions of act No. 3 of 1874, and was not of any of the bonds held by the State for either the seminary fund or the Agricultural and Mechanical College fund, but was in circulation and in the hands of a *bona fide* holder at and prior to the 1st of January, 1880; that by the operation of the constitution of the State going into force January 1, 1880, particularly that subdivision thereof entitled "State debt," the holder of said consolidated bond had the right to exchange said bond for a bond of the State provided for in said constitution for seventy-five per centum of the face value of said bond, bearing interest at the rate of four per cent. per annum, as provided in said subdivision of said constitution, made part hereof; that after the first day of January, 1880, and while E. A. Burke was treasurer of the State, the owner of said consolidated bond No. 532, whose name is to both plaintiffs and defendant unknown, applied to the said E. A. Burke for the exchange of this particular bond for seventy-five per cent. thereof in said new bonds, the bonds to be given in such exchange being in the lawful custody of said Burke, and he, having the right to make such exchange, took into his possession the said consolidated bond No. 532 so surrendered and issued and returned to the holder thereof a new bond for seventy-five per centum of the face value thereof, and instead of canceling said consolidated bond No. 532 he at once put the said consolidated bond No. 532 so surrendered in circulation with the mass of other State bonds, so that both the said surrendered consolidated bond No. 532 and the bond for 75 per cent. thereof exchanged therefor went into the hands of *bona fide* holders with no knowledge of the frauds of said State treasurer; that at the time of the purchase of the said consolidated bond in open market by the defendant and the sale thereof to the plaintiffs neither party nor the public had any knowledge or suspicion of said fraud or that said surrendered bond had been put on the market or in circulation by the said Burke, treasurer.

23. That after the constitution of 1880 went into effect and
15 after the first day of January, 1880, all of said bonds were stamped on the face thereof as provided by the second article of the debt ordinance adopted with said constitution with the words *public* " interest reduced to two per cent. per annum for five years from January 1, 1880; three per cent. per annum for fifteen years, and four per cent. per annum thereafter," and were at the time of the said purchase of said bonds by said defendant in the market as public bonds bearing that endorsement or stamp.

24. The six bonds sued upon, filed herein and numbered respectively 740, 793, 846, 856, 900, and 904 are a portion of the consolidated bonds of the State of Louisiana issued under act No. 3 of 1874, as herein set forth, and were held by the State treasurer at the

time of the adoption of the State constitution of 1879, being so held for the use of and belonging to the Agricultural and Mechanical College fund, and that the said bonds were in the possession of the State treasurer during the legislature session of 1880 and 1882.

25. That the six bonds numbered respectively 1971, 1993, 2020, 2010, 2057, and 2026, filed herein, and sued upon are a portion of the consolidated bonds of the State of Louisiana issued by the State of Louisiana under act No. 3 of 1874, as herein set forth, and were in the possession of the State treasurer previous to and at the time of the adoption of the State constitution of 1879 for the use of and belonging to the seminary fund, as hereinbefore referred to, and that the said bonds were in the possession of the State treasurer during the legislature sessions of 1880 and 1882.

26. That the bond herein sued upon and numbered 532 is a portion of the consolidated bonds of the State of Louisiana now being claimed by the State, as set forth in finding number 22 herein.

It is admitted that the State auditor and treasurer have refused to warrant for or to pay the coupons on the above-described bonds falling due since the 1st day of July, 1886, the prior coupons
16 upon the said bonds having been paid by the State of Louisiana through her auditor and treasurer, as hereinbefore recited.

It is further admitted that the auditor and treasurer of State have given notice to the world since September, 1889, that the above-described bonds are null and void and not legal debts of the State.

It is further admitted that E. A. Burke was treasurer of the State of Louisiana from 1878 to 1886 and charged with the custody of said bonds belonging to the Agricultural and Mechanical College and Seminary funds, and that said Burke has been indicted for the conversion of said bonds of the State to his own use; that he is now and has been since 1889 a fugitive from justice, and that the governor has been authorized by the legislature to issue a reward for his apprehension.

27. That if the plaintiffs are entitled to recover upon the acts and findings herein stated they are entitled to recover the amount prayed for in the petition in form as prayed for therein, unless said bond No. 532 for five hundred dollars stands on a different basis than the other said bonds.

(Signed) FARRAR, JONAS & KRUTTSCHNITT,
Attorneys for Pl'ff.
BECKWITH & LAZARUS, *Att'ys for Def't.*

(Bond marked p. 16½ follows.)

17 *Agreement as to Lost Petition, Answer, and Agreed Statement of Facts. Filed July* 10, 1891.

Circuit Court of the United States, 5th Circuit and Eastern District of Louisiana.

VICTOR MEYER and ADOLPH MEYER
versus
WALTER T. RICHARDS. } No. 12003.

The original petition, answer, and agreed statement of facts duly filed and of record in this cause having been mislaid or lost since the hearing and judgment herein, it is stipulated and agreed that the printed copies thereof hereunto annexed are true and correct copies of the said petition, answer, and agreed statement of facts as they were of record, and that the clerk file the same in place of said lost portion of said record, and that they stand in all respects as the original record in this case.

(Signed) FARRAR, JONAS & KRUTTSCHNITT,
Att'ys for Plaintiffs.
BECKWITH & LAZARUS,
Att'ys for Def't.

17½ *Judgment.*

Extract from the Judgment Book.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana, April Term, 1891.

NEW ORLEANS, FRIDAY, *June* 26, 1891.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.

VICTOR and ADOLPH MEYER
versus
WALTER T. RICHARDS. } No. 12003.

This cause having been submitted to the court by agreement of counsel upon the agreed statement of facts and briefs, and the court having considered the same—

For the reasons in the written opinion filed this day, it is ordered, adjudged, and decreed that there be judgment in favor of the defendant with costs.

Judgment rendered June 26, 1891; judgment signed June 27, 1891.

(Signed) DON A. PARDEE, *Judge.*

18 *Stipulation. Filed June* 27, 1891.

United States Circuit Court for the Eastern District of Louisiana, Fifth Circuit.

VICTOR MEYER and ADOLPH MEYER
versus
WALTER T. RICHARDS. } No. 12003.

It is stipulated and agreed that all legal delays in this cause be waived and that the judgment be signed and made final without the delays allowed by law.

FARRAR, JONAS & KRUTTSCHNITT.
BECKWITH & LAZARUS.

Assignment of Errors. Filed June 27, 1891.

Circuit Court of the United States for the Eastern District of Louisiana.

VICTOR and ADOLPH MEYER
versus
WALTER T. RICHARDS. } No. 12003.

And now comes the said Victor Meyer and Adolph Meyer, plaintiffs in error, and assign for error in this cause the following errors among others:

19 I.

That considering the agreed statement of facts in this cause the court erred in rendering judgment against the said plaintiffs in this cause, and should have rendered judgment in favor of plaintiffs and against the said defendant in said cause.

II.

Considering the facts as stated and agreed upon, the court erred in not holding the said defendant therein liable to the said plaintiffs as warrantor of the said bonds, and should have so adjudged in this cause against the said Walter T. Richards, defendant therein.

FARRAR, JONAS & KRUTTSCHNITT,
Attorneys for Plaintiffs in Error.

Writ of Error. Filed June 27, 1891.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit and holding sessions for the eastern district of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before

you or some of you, between Victor Meyer and Adolph Meyer, plaintiffs, and Walter T. Richards, defendant, No. 12003 of the docket of your said court, a manifest error hath happened, to the great damage of the said Victor Meyer and Adolph Meyer, plaintiffs therein, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy
20 justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the twenty-fourth day of July next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this twenty-seventh day of June, in the year of our Lord one thousand eight hundred and ninety-one.

[L. S.]

E. R. HUNT,
Clerk of the United States Circuit Court for the Eastern District of Louisiana.

Writ allowed June 27, 1891.

DON A. PARDEE,
Circuit Judge.

Bond for Writ of Error. Filed June 27, 1891.

Know all men by these presents that we, Victor Meyer and Adolph Meyer, as principals, and Edward S. Johnson, as surety, are held and firmly bound unto Walter T. Richards in the full and just sum of five hundred dollars, to be paid to the said Walter T. Richards, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

21 Sealed with our seals and dated this 27th day of June, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas lately, at a circuit — of the United States, fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, in a suit pending in the said circuit court, wherein Victor Meyer and Adolph Meyer are plaintiffs and Walter T. Richards is defendant, judgment was rendered against the said plaintiffs, Victor Meyer and Adolph Meyer, and the said Victor Meyer and Adolph Meyer, plaintiffs, having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Walter T.

Richards, citing and admonishing him to be and appear at the Supreme Court of the United States to be holden at Washington on the twenty-fourth day of July, A. D. one thousand eight hundred and ninety-one:

Now, the condition of the above obligation is such that if the said Victor Meyer and Adolph Meyer shall prosecute their writ to effect and answer all damages and cost if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of—

[L. S.] VICTOR MEYER.
[L. S.] AD. MEYER.
[L. S.] V. & A. MEYER & CO.
[L. S.] EDW. S. JOHNSON.

Bond accepted.

DON A. PARDEE, *Judge.*

We admit the surety solvent and sufficient.

BECKWITH & LAZARUS,
Attorneys for Defendants in Error.

22 *Citation. Filed June* 27, 1891.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Walter T. Richards, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the 24th day of July next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Victor Meyer and Adolph Meyer are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Victor Meyer and Adolph Meyer, plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 27th day of June, in the year of our Lord one thousand eight hundred and ninety-one.

DON A. PARDEE, *Judge.*

EASTERN DISTRICT OF LOUISIANA, *ss:*

Richard Peete, Jr., being duly sworn, deposes and says that he served the within citation upon Henry L. Lazarus, one of the attorneys for the defendant in error and for the defendant in the cause,

by delivering the original thereof to him at his office, in the
23 city of New Orleans, State of Louisiana, on the 27th day of June, A. D. 1891, and leaving the same with him.

RICHARD PEETE, JR.

Sworn to and subscribed before me this 27th day of June, 1891, A. D.

[L. S.] HUNTER C. LEAKE,
Notary Public.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial, — the case of — No. 12003 of the docket of the said court.

Witness my hand and the seal of said court at the city of New Orleans this 20th day of July, A. D. 1891.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

[L. S.] E. R. HUNT, *Clerk.*

24 *Opinion. Filed June* 26, 1891.

This cause has been submitted near the close of the term without argument other than that furnished by printed briefs in other cases where the facts did not fully appear with a request for a speedy decision. A brief opinion is all that is possible.

The agreed statement of facts shows that the defendant, prior to the sale of the bonds herein in question, was the *bona fide* holder of each and all of the bonds described, having acquired each and all of said bonds in open public market for full market value, with no notice whatsoever of any alleged vice or alleged illegality of the bonds, and that the said bonds are in no sense forgeries, but fraudulent reissues of genuine bonds.

These facts being admitted, in my opinion the case is controlled by the decision of the Supreme Court of the United States in Otis *vs.* Cullum, 92 U. S., 447. In that case the bank of which Cullum was receiver had sold certain bonds issued by the city of Topeka. The bonds were afterward judicially declared void, because the act authorizing their issue was unconstitutional. The purchasers sued to recover the amount paid for the bonds, alleging failure of consideration.

The court said: "Such securities throng the annals of commerce, which they are made to seek and where they find their market. They pass from hand to hand like bank notes. The seller is liable

ex delicto for bad faith and *ex contractu* there is implied warranty that they belong to him and that they are not forgeries. Where there is no express stipulation there is no liability beyond this. If the buyer desires special protection he must take a guaranty. He can dictate its terms and refuse to buy unless it be given. If not taken he cannot occupy the vantage ground upon which it would have placed him. It would be unreasonably harsh to hold all those through whose hands such instruments may have passed liable, according to the principles which the plaintiffs in error insist shall be applied in this case."

25 The doctrine of this case has been recognized and approved in the case of Orleans *vs.* Platt, 99 U. S., 676, and in Ætna Life Ins. Co. *vs.* Middleport, 124 U. S., 545. It is not necessary to cite authorities to show that the *bona fide* holder of negotiable securities has title. In the view I have taken of the case the liability of the State on the bonds in controversy is not a material question and is nowise passed upon. It is therefore ordered, adjudged, and decreed that there be judgment in favor of defendants with costs.

26 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit and holding sessions for the eastern district of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Victor Meyer and Adolph Meyer, plaintiffs, and Walter T. Richards, defendant, No. 12003 of the docket of your said court, a manifest error hath happened, to the great damage of the said Victor Meyer and Adolph Meyer, plaintiffs therein, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the twenty-fourth day of July next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 27th day of June, in the year of our Lord one thousand eight hundred and ninety-one.

E. R. HUNT,
Clerk of the United States Circuit Court for the Eastern District of Louisiana.

Writ allowed June 27, 1891.

DON A. PARDEE,
Circuit Judge.

27 [Endorsed:] United States circuit court. No. 12003. Victor & Adolph Meyer *versus* Walter T. Richards. Writ of error. Filed June 27, 1891. E. R. Hunt, clerk.

Endorsed on cover: Case No. 14766. E. Louisiana C. C. U. S. No. 1292. Victor Meyer and Adolph Meyer, plaintiffs in error, *vs.* Walter T. Richards. Filed July 23, 1891.

Supreme Court of the U. S. 1891 Term, No. 1292.

VICTOR and ADOLPH MEYER, Plaintiffs in Error,
vs.
WALTER T. RICHARDS, Defendant in Error. } No. 14766.

It is stipulated and agreed between the undersigned counsel, representing respectively Victor and Adolph Meyer, plaintiffs in error, and Walter T. Richards, defendant in error—

That there is error in the printed record—in the dates mentioned in the 26th finding of fact—to wit, that it should read as the fact was proved on trial, as follows:

"It is admitted that the State auditor and treasurer have refused to warrant or pay the coupons on the above-described bonds falling due since the 1st of July, 1889, the prior coupons upon said bonds having been paid by the State of Louisiana through her auditor and treasurer, as hereinbefore recited."

And it should further read that "E. A. Burke was treasurer of the State of Louisiana from 1878 to 1888."

It is admitted that upon the application of the New York Stock Exchange the State treasurer addressed a reply to Geo. W. Ely, sec't'y of said exchange, giving the numbers of the outstanding valid bonds of the State; which letter reads as follows:

MARCH 11, 1889.

George W. Ely, Esq., sec't'y New York Stock Exchange, New York, N. Y.

DEAR SIR: Louisiana consolidated bonds have been issued of the following denominations and numbers:

$1,000. Bonds Nos. 1 to 10,000.
$500. Bonds Nos. 1 to 3305.
$100. Bonds Nos. 1 to 4571 and 4573 to 4581.
No. 4572 has not yet been issued.

The present bonded debt of the State consists of issue of consolidated bonds	$12,110,500 00
Less retired in exchange for constitutional bonds	290,200 00
	$11,820,300 00
Constitutional bonds	217,650 00
Bonded debt	$12,037,950 00

The difference between these figures and those you quote consists in par certificates issued for fractional parts of bondable obligations and a certain obligation of the State which may be converted into bond- at some future period.

Yours truly,

(Signed) W. H. PIPES,
Treas. State of La.